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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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Application by New York)
Telephone Company (d/b/a Bell)
Atlantic – New York), Bell Atlantic)
Communications, Inc., NYNEX)
Long Distance Company, and Bell)
Atlantic Global Networks, Inc., for)
Authorization To Provide)
In-Region, InterLATA Services in)
New York)


CC Docket 99-295

**ERRATUM TO INTERMEDIA COMMUNICATIONS INC.
COMMENTS RE: APPLICATION BY BELL ATLANTIC-NEW YORK FOR
AUTHORIZATION TO PROVIDE IN-REGION
INTERLATA SERVICES IN NEW YORK**

On Tuesday, October 19, 1999, Intermedia Communications Inc. ("Intermedia") filed comments in the above-referenced proceeding. Subsequently, Intermedia discovered that a version of the pleading containing several typographical errors was inadvertently filed with the Commission. A corrected version of Intermedia's filing is attached hereto. Please associate this corrected version with Intermedia's filing.

INTERMEDIA COMMUNICATIONS INC.

By:


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October 21, 1998

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SUMMARY

In these comments, Intermedia reviews Bell Atlantic's section 271 Application ("Application") and sets forth a point-by-point analysis of Bell Atlantic's performance as to each item contained in the Competitive Checklist. Additionally, Intermedia recommends that the Commission, as part of its public interest analysis, review Bell Atlantic's "anti-backsliding" plan. As an initial matter, Intermedia wishes to commend the both the New York Public Service Commission and its staff and this Commission for the diligent effort aimed at promoting robust competition in the New York local exchange market. Accordingly, Intermedia believes that the comprehensive review process conducted in New York and by this Commission should serve as model for future 271 application reviews.

As discussed herein, Intermedia concludes that Bell Atlantic has generally met the majority of its responsibilities under the Competitive Checklist. Intermedia, however, expresses concern as to Bell Atlantic's provisioning of unbundled local loops, specifically in the area of "hot cuts." Further, pursuant to the Commission's recent adoption of the *UNE Remand Order*, the Commission should require Bell Atlantic to demonstrate that it is providing DSL-capable loops in a nondiscriminatory fashion.

Intermedia also requests that the Commission analyze Bell Atlantic's Performance Assurance Plan ("PAP") to ensure that local exchange competition in the New York market will remain robust once Bell Atlantic's Application is approved. In particular, Intermedia requests that the Commission review whether Bell Atlantic, under the PAP, may offset poor performance with positive performance. Lastly, the Commission should review the penalty provisions in the PAP to determine if Bell Atlantic truly has incentive to avoid discriminating against competitors.

Intermedia believes that if Bell Atlantic is able to improve its provisioning of unbundled local loops and revise the PAP so as to prevent “backsliding,” then the Commission should approve Bell Atlantic’s Application as both meeting the Competitive Checklist requirements and serving the public interest.

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**COMMENTS OF INTERMEDIA
COMMUNICATIONS INC.**

Intermedia Communications Inc. (“Intermedia”), pursuant to the Commission’s September 29, 1999 Public Notice in the above-captioned proceeding, hereby submits these comments on the Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York (“Application”).¹ Intermedia would like to thank the Commissioners and Staff of the New York Public Service Commission (“New York Commission”) for their exhaustive efforts in reviewing Bell Atlantic-New York’s (“Bell Atlantic”) compliance with section 271 of the Act. Bell Atlantic has made extraordinary progress in its efforts to comply with section 271. As discussed below, there are certain requirements with which Bell Atlantic has not yet demonstrated compliance. Intermedia believes that if Bell Atlantic provides evidence of compliance with the

¹ *Application by New York Telephone Company (d/b/a Bell Atlantic – New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic*
(continued...)

few remaining issues addressed herein prior to the expiration of the Commission's 90-day review period, Bell Atlantic's Application should be approved. Set out below is a point-by-point analysis of the section 271 checklist, and Intermedia's corresponding position with respect to each issue.

I. SECTION 251 INTERCONNECTION

The Act requires Bell Atlantic to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." Section 251(c)(2) thus imposes upon a 271 applicant "the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network...for the transmission and routing of telephone exchange service and exchange access" at any technically feasible point, and in a manner at least equal in quality to interconnection the BOC provides to itself, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

Section 252(d)(1) of the Act states that "[d]eterminations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of [section 251(c)(2)]...(A) shall be (i) based on the cost...of providing the interconnection...and (ii) nondiscriminatory, and (B) may include a reasonable profit." Competing carriers have the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network.²

(...continued)

Global Networks, Inc. for Authorization To Provide In-Region, InterLATA Services in New York, CC Docket No. 99-295, Public Notice DA 99-2014 (rel. Sept. 29, 1999).

² See 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a)(2); *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 209 (1996) ("Local Competition First Report and Order").

Collocation

In satisfaction of its interconnection obligations Bell Atlantic indicates that it provides collocation in approximately 776 sites throughout New York, with more than 60% of those sites added in 1999.³ Further, Bell Atlantic states that competitors are collocated in central offices serving 85 percent of Bell Atlantic's access lines in New York.⁴

Previously, Intermedia had raised concerns about Bell Atlantic's ability to provide collocation in a timely and efficient manner, primarily as a result of problems associated with collocation methods and procedures documentation. It is Intermedia's position, however, that the documentation problems associated with collocation methods and procedures in New York have been addressed in a satisfactory manner. In response to Intermedia's concerns, Bell Atlantic has implemented a process control model and added six local collocation coordinators to their organization dedicated to New York State.⁵ In addition, Bell Atlantic has implemented a web-based workflow management tool, which allows tracking and reporting from a central system to all of the process participants. Bell Atlantic has also agreed to notify CLECs when cost to prepare collocation space exceeds the original estimate by more than ten percent, so that the CLEC is afforded an opportunity to cancel the order. Intermedia agrees with KPMG's findings in the Exception Closure Report that Bell Atlantic has effectively addressed the problems that existed with the collocation planning process, effectively eliminating most concerns.

³ See Application, at 16.

⁴ See *id.*

⁵ KPMG Exception Closure Report, Exception ID 26.

Two-Way Trunking

A BOC must accommodate a competitor's request for two-way trunking where technically feasible.⁶ The BOC violates the duty to be "just" and "reasonable" under section 251(c)(2)(D) if it provides interconnection to a competitor in a manner less efficient than the BOC provides itself.⁷ In particular, a BOC must engineer, repair, and maintain its interconnection trunks to the competing carrier in the same manner that the BOC performs these functions on its own interoffice transmission facilities. In order to demonstrate compliance with this checklist item, BOCs must identify and repair outages on interconnection trunks and repair outages that disrupt service on its own interoffice transmission trunks in a timely manner. Bell Atlantic's Application indicates that coordination problems that had been affecting its trunk provisioning performance have essentially been solved, and therefore it has met all of the Act's requirements for interconnection.⁸ In support of this proposition, Bell Atlantic asserts that it has provided 37 competing carriers with 349,000 interconnection trunks – more than one-third of the total number of trunks that Bell Atlantic has connecting its switches in its entire interoffice network in New York state.⁹ Bell Atlantic further claims to have met, during the first seven months of 1999, over 99 percent of the due dates for interconnection trunks.¹⁰

In its Pre-Filing Statement Bell Atlantic committed to provide two-way trunks to end offices and tandems on a measured use basis. Subsequently, Bell Atlantic tariffed this offering in its PSC No. 914 Tariff, and since that time Bell Atlantic has made dramatic improvements in

⁶ See 47 C.F.R. § 51.305(f); *Local Competition First Report and Order*, ¶ 219.

⁷ See *Local Competition First Report and Order*, ¶ 218.

⁸ See Application, at 14.

⁹ See *id.*

¹⁰ See *id.* at 15.

the performance of this service offering. Intermedia previously raised concerns with Bell Atlantic's ability to accommodate Intermedia's requests for two-way trunking arrangements.¹¹ However, since the time Intermedia first voiced its concerns, the companies have worked together extensively to ensure that both trunk groups that are currently deployed, as well as those that are to be deployed in the future, are capable of handling the projected call volumes. Intermedia is satisfied that Bell Atlantic has satisfied the majority of the checklist and its commitments under the Pre-Filing Statement, and Intermedia is confident that Bell Atlantic will continue to make progress in meeting the rest of its responsibilities.

II. SECTION 251 NONDISCRIMINATORY ACCESS TO NETWORK ELEMENTS¹²

In order to provide nondiscriminatory access to unbundled network elements in compliance with the Act Bell Atlantic must provide access to all UNEs, including OSS.¹³ The availability of OSS is important because access it provides CLECs with the ability to order service for their customers and allows them to communicate effectively with the BOC regarding such basic activities as placing orders and providing repair and maintenance service for customers. In Intermedia's experience, Bell Atlantic complies with this requirement under the Act.

¹¹ See "Comments of Intermedia Communications Inc. Regarding Bell Atlantic-New York's Supplemental Filing Regarding Prefiling Statement Milestones Met as of August 15, 1998 and the September 11, 1998 Joint Affidavit of Julie Canny, Karen Maguire, Patrick Stevens and Craig Soloff" (Sept. 28, 1998).

¹² In this section Intermedia addresses only Bell Atlantic's compliance as to OSS nondiscriminatory provision. Set out in other sections are Intermedia's positions as to other network elements; in particular, Intermedia focuses on DSL capable loops under Section IV.

¹³ See 47 U.S.C. § 271(c)(2)(B)(ii).

III. NONDISCRIMINATORY ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY AT JUST AND REASONABLE RATES

In order to comply with section 271 Bell Atlantic must provide “[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224.” Bell Atlantic must demonstrate that competing providers can obtain access to Bell Atlantic’s poles, ducts, conduits, and rights-of-way within reasonable time frames and on reasonable terms and conditions, with a minimum of administrative costs, and consistent with fair and efficient practices.¹⁴ In Intermedia’s experience, Bell Atlantic has complied with this provision of the Act.

IV. UNBUNDLED LOCAL LOOPS

In order to demonstrate compliance with the nondiscrimination requirement under checklist item (iv) of the competitive checklist, a BOC must demonstrate that it can efficiently furnish unbundled loops to competing carriers within a reasonable timeframe, with a minimum level of service disruption, and at the same level of service quality. Nondiscriminatory access to unbundled local loops ensures that new entrants can provide quality telephone service promptly to new customers without constructing new loops to each customer's home or business.¹⁵ Finally, the Commission should review Bell Atlantic’s ability to provide unbundled local loops on a nondiscriminatory basis under the public interest standard.¹⁶ While Intermedia has no direct

¹⁴ See 47 U.S.C. § 271(c)(2)(B)(iii).

¹⁵ See 47 U.S.C. § 271(c)(2)(B)(iv).

¹⁶ In the *Ameritech Michigan Section 271 Order*, the Commission emphasized that in reviewing section 271 applications, it would not confine its analysis to whether the applicant meets the checklist. Rather, the Commission stated that it would consider whether: pro-competitive entry strategies were available to new entrants; whether the BOC is making these entry methods available; whether the BOC has agreed to performance monitoring; and whether behavior exists that violates state or federal

(continued...)

experience with loop cutovers, the Commission must, under its public interest analysis, ensure that customers are able to receive a dial tone in an emergency. Thus, the Commission must analyze this checklist item not only under the competitive checklist, but also with respect to Bell Atlantic's public interest responsibilities.

Hot Cuts

As Intermedia has previously indicated, it has concerns regarding Bell Atlantic's provisioning of hot-cut loops. Specifically, Intermedia identified issues with the manner in which Bell Atlantic calculates hot-cut on-time performance. Bell Atlantic acknowledges that it does not accurately depict whether the end user customer experiences a service disruption,¹⁷ as a result of a quirk in the on-time performance metric for unbundled loops, which counts early loop cutovers as "on time." While it appears that Bell Atlantic's performance is improving, Intermedia believes that consistent record of performance should exist prior to the grant of Bell Atlantic's Application.¹⁸ The Commission must ensure that Bell Atlantic is capable of provisioning loops, and that the performance metrics used utilized to analyze loop provisioning present an accurate picture of Bell Atlantic's performance.

DSL Capable Loops

Bell Atlantic has an obligation to provide nondiscriminatory access to DSL capable loops. The Commission has stated that in order to demonstrate compliance with its obligation to provide nondiscriminatory access to unbundled loops, a BOC "must provide access to any

(...continued)

telecommunications law. *See Ameritech Michigan Section 271 Order*, ¶¶ 363-64, 392-97.

¹⁷ *See* Bell Atlantic Joint Supplemental Affidavit at ¶147 (Apr. 13, 1999).

¹⁸ *Cf.* Bell Atlantic Joint Supplemental Affidavit at ¶147 (Apr. 13, 1999); Bell Atlantic Second July Update Affidavit at ¶ 42 (July 22, 1999)

functionality of the loop requested by the competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested.”¹⁹ Moreover, pursuant to the Supreme Court’s remand of the unbundling rules in the *Iowa Utilities Board*²⁰ decision, the Commission recently adopted an order mandating that xDSL capable loops be unbundled. However, in Intermedia’s estimation, Bell Atlantic has not yet demonstrated an ability to provide DSL capable loops in a nondiscriminatory fashion.²¹ Specifically, Bell Atlantic imposes restrictions upon the availability of DSL capable loops, and has not demonstrated that its proposed prices comport with the Commission’s requirement that such rates be set at TELRIC. Further, there are no performance metrics currently in place for DSL capable loops in New York, and therefore Intermedia is unable to support Bell Atlantic’s Application with respect to this checklist item until Bell Atlantic completes a showing that it is capable of providing DSL capable loops in a nondiscriminatory manner.

V. UNBUNDLED TRANSPORT

Transport facilities are the trunks that connect different switches within the BOC's network or those switches with long distance carriers' facilities. This checklist item requires a BOC to provide requesting carriers with transmission links that are dedicated to the use of the requesting carrier as well as links that are shared with other carriers, including the BOC.

¹⁹ See *BellSouth Louisiana II Section 271 Order*, ¶ 187.

²⁰ See *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999); see also “FCC Promotes Local Competition – Adopts Rules on Unbundling of Network Elements,” Commission Press Statement, September 15, 1999.

²¹ See *Comments Of Intermedia Communications Inc. Regarding Bell Atlantic-New York’s Revisions To Its P.S.C. 916 Tariff Proposing Rates For ADSL-Qualified, HDSL Qualified and Digital-Designed Links*, New York P.S.C. Case 98-C0-1357, (filed Sept. 23, 1999).

Nondiscriminatory access to transport ensures that consumer calls traveling over competing carrier lines are completed properly.²²

Bell Atlantic states that it has provided over 152,000 unbundled local switch ports to CLECs in New York.²³ Further, Bell Atlantic states that it has met orders for platforms, which is how transport is provided, over 99 percent on time.²⁴ Intermedia believes, based upon its experience, that Bell Atlantic is satisfactorily providing transport under section 271.

VI. UNBUNDLED SWITCHING

Bell Atlantic must demonstrate that it provides nondiscriminatory access to all of the features, functions, and capabilities of the unbundled local switch.²⁵ Bell Atlantic states that it has provided over 152,000 unbundled switching elements, as part of platforms, with a 99 percent on time rate.²⁶ As support of its compliance under this item, Bell Atlantic notes that KPMG found that Bell Atlantic will be able to handle over 570,130 orders this year.²⁷ These figures signify a solid effort on the part of Bell Atlantic, and as such, Intermedia believes that Bell Atlantic has complied with this checklist item.

VII. NONDISCRIMINATORY ACCESS TO: 911/E911, DIRECTORY ASSISTANCE, OPERATOR CALL COMPLETION SERVICES

Checklist item (vii) of the competitive checklist requires Bell Atlantic to provide competing providers with nondiscriminatory access to 911/E911, operator services, and directory assistance. It is critical that BOC'S provide new entrants with accurate and nondiscriminatory

²² See 47 U.S.C. § 271(c)(2)(B)(v).

²³ See Application, at 27.

²⁴ See *id.*

²⁵ See 47 U.S.C. § 271(c)(2)(B)(vi).

²⁶ See Application, at 28.

²⁷ See *id.* (citing *KPMG Report POP6 IV138-49*).

access to 911/E911 services so that customers subscribing to services provided by new entrants are able to reach emergency assistance.²⁸ Bell Atlantic states that it provides competing carriers with these functions on a widespread basis in New York with 26 competing carriers connecting to Bell Atlantic's 911/E911 tandems and 16 carriers purchasing directory assistance over 337 dedicated trunks and an additional 8 carriers purchasing directory assistance using shared transport.²⁹ In Intermedia's experience, it appears that Bell Atlantic has met this checklist item.

VIII. WHITE PAGE DIRECTORY LISTINGS

This checklist item ensures that white pages listings for customers of different carriers are comparable, in terms of accuracy and reliability, notwithstanding the identity of the customer's telephone service provider.³⁰ Bell Atlantic states that it is providing directory listings on an "extensive" basis.³¹ Bell Atlantic claims that it intermingles competitors listings with its own and offers competitors various opportunities to check to see that listings are correct, and that listings are not dropped when customers are switched from Bell Atlantic to a competitor.³² Intermedia has consistently received excellent white page listing accuracy from Bell Atlantic, and therefore, it appears that Bell Atlantic complies with this item of the checklist.

²⁸ See 47 U.S.C. § 271(c)(2)(B)(vii).

²⁹ See Application, at 36-37.

³⁰ See 47 U.S.C. § 271(c)(2)(B)(viii).

³¹ See Application, at 38.

³² See *id.* at 38-39.

IX. NONDISCRIMINATORY TELEPHONE NUMBER ASSIGNMENT

Competitive checklist item (ix) of the Act requires a section 271 applicant to provide nondiscriminatory access to telephone numbers for assignment to competing carriers' telephone exchange service customers, "[u]ntil the date by which telecommunications numbering administration guidelines, plan, or rules are established."

Because the BOC functions as numbering administrators have all been transferred to Lockheed Martin Information Management Services in its capacity as the North American Numbering Plan Administrator, Lockheed Martin now assigns numbers to competing carriers.³³ As a result, as of July 1999, Bell Atlantic is no longer responsible for assigning numbers, either to itself or to competing carriers. In its Application, Bell Atlantic states that it provides testing so that calls will be routed appropriately, and that such testing is available to competitors and is provided on a timely basis.³⁴ Therefore, in Intermedia's experience, Bell Atlantic appears to comply with this item.

X. ACCESS TO DATABASES AND SIGNALING

To fulfill the nondiscrimination obligation in checklist item (x), a Bell Atlantic must demonstrate that it provides new entrants with the same access to these call-related databases and associated signaling that it provides itself. This checklist item ensures that competing providers have the same ability to transmit, route, complete and bill for telephone calls as the BOC.³⁵

³³ See generally *Administration of the North American Numbering Plan and Toll Free Service Access Codes*, Third Report and Order, 12 FCC Rcd 23040 (1997) ("*NANP Order III*").

³⁴ See Application, at 40.

³⁵ See 47 U.S.C. § 271(c)(2)(B)(x).

Bell Atlantic claims that it offers all carriers nondiscriminatory access to its SS7 signaling network.³⁶ Bell Atlantic supports this claim by stating that all queries are intermingled so that queries are processed on a first-come, first-served basis, with Bell Atlantic receiving no preference.³⁷ It is Intermedia's experience that Bell Atlantic does, in fact, provide signaling on a nondiscriminatory basis and therefore has met this checklist item.

XI. INTERIM NUMBER PORTABILITY

To fulfill checklist item (xi), Bell Atlantic must provide number portability in a nondiscriminatory manner as soon as reasonably possible following a request from a competitor. This checklist item is important because it permits consumers to change service providers without having to change their telephone number.³⁸ In its Application, Bell Atlantic states that it has implemented long-term number portability in all of its New York end offices. Further, Bell Atlantic claims that it continues to offer interim number portability to CLECs that have not migrated to long-term number portability. Based on these facts and Intermedia's experience, Intermedia believes that Bell Atlantic has met this checklist item.

XII. INFORMATION FOR LOCAL DIALING PARITY

To fulfill the nondiscrimination obligation in checklist item (xii), Bell Atlantic is required to demonstrate that customers of a competing provider are able to dial the same number of digits to make a local telephone call, notwithstanding the identity of the customer's, or the called party's, local telephone service provider. In addition, the dialing delay experienced by the customers of a competing provider should not be greater than that experienced by customers of

³⁶ See Application, at 40.

³⁷ See *id.* at 40-41.

³⁸ See 47 U.S.C. § 271(c)(2)(B)(xi).

the BOC.³⁹ In Intermedia's experience, Bell Atlantic appears to provide local dialing parity throughout New York, and Intermedia believes that Bell Atlantic has met this checklist item.

XIII. RECIPROCAL COMPENSATION

Section 271(c)(2)(B)(xiii) of the Act mandates that a section 271 applicant's access and interconnection include "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." To comply with this checklist item, Bell Atlantic must demonstrate compliance with the reciprocal compensation provisions of its interconnection agreement by making all required payments in a timely fashion.

In its Application, Bell Atlantic states that it provides reciprocal compensation to New York competitors for termination of local calls.⁴⁰ During the first seven months of 1999, Bell Atlantic claims that it paid competing carriers \$98.4 million in reciprocal compensation payments while collecting only \$7.5 million from competing carriers.⁴¹ In Intermedia's experience, Bell Atlantic has met its burden with respect to this checklist item.

XIV. RESALE AT WHOLESALE RATES

Section 271(c)(2)(B)(xiv) of the Act requires Bell Atlantic to make "telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)." Section 251(c)(4)(A) requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Section 252(d)(3) sets forth the basis for determining "wholesale rates" as the "retail rates charged to subscribers for the telecommunications service requested,

³⁹ See 47 U.S.C. § 271(c)(2)(B)(xii).

⁴⁰ See *id.*

⁴¹ See *id.* at 43-44.

excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."

Bell Atlantic states that it makes available for resale at wholesale rates all of the telecommunications services it offers at retail to subscribers that are not telecommunications carriers.⁴² Bell Atlantic states that, through July 1999, it has provided 314,000 resold lines to more than 65 competing carriers.⁴³ Bell Atlantic further states that it provides resale on a timely basis and, as support, that KPMG has verified that Bell Atlantic's ability to provide resold lines exceeds actual demand.⁴⁴ In Intermedia's estimation, it appears that Bell Atlantic has met the requirements with respect to this checklist item.

XV. THE COMMISSION MUST ENSURE THAT BELL ATLANTIC'S APPLICATION MEETS THE PUBLIC INTEREST STANDARD

Throughout the New York proceedings Intermedia has expressed concern about Bell Atlantic's Performance Assurance Plan ("PAP") and Change Control Assurance Plan. Changes to the PAP are required to protect the public interest. As written, the PAP would allow Bell Atlantic to backslide from the checklist compliance that currently exists. Specifically, Intermedia has reservations because in its current form, the PAP COULD allow Bell Atlantic to engage in discriminatory practices with minimal financial penalty. Furthermore, the PAP precludes small CLECs from being properly compensated under for discriminatory treatment in the provision of services. To ensure "irreversible competition" in New York markets, the Commission MUST ensure that Bell Atlantic's PAP penalties are meaningful.

⁴² See Application, at 44.

⁴³ See *id.*

⁴⁴ See *id.*

The PAP is a good start toward implementing the “self-executing enforcement mechanisms” envisioned by the Commission.⁴⁵ Despite such movement, when reviewed on a global basis, the PAP continues to offer only minimal mechanisms to prevent Bell Atlantic backsliding. In order to ensure that New York customers are afforded the benefits of true local telecommunications competition, the Commission must pursue further changes in the PAP in order to ensure that all carriers are treated equitably.

A. The Bell Atlantic Performance Assurance Plan Is Not Sufficient to Ensure Compliance with Established Performance Standards as Required by the Commission

Even with the significant changes made by Bell Atlantic since its initial March 26, 1999 proposal, the PAP continues to fail to meet the requirements of the Commission for self-executing enforcement mechanisms. The PAP would continue to allow Bell Atlantic to hide discriminatory practices through a weighting and penalty mechanism that does not address the real consequences of discrimination. Furthermore, the monetary penalties in the PAP are far below the levels necessary to incent Bell Atlantic to provide non-discriminatory service.

Of particular concern to Intermedia is the manner in which the Bell Atlantic PAP continues to establish a “maximum” penalty. Any “maximum” penalty implies a limitation on the “maximum” detriment that can be suffered by CLECs through discriminatory actions by Bell Atlantic. For these reasons that the Bell Atlantic PAP must be modified to meet the Commission’s public interest analysis and the needs of New York consumers.⁴⁶

⁴⁵ *In the Matter of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, ¶ 364 (rel. October 13, 1998).

⁴⁶ See Letter from Lawrence E. Strickling, Chief Common Carrier Bureau, to SBC Telecommunications, Inc., dated September 28, 1999 (discussing caps on liability).

B. A More Stringent Performance Plan Would Not Arbitrarily Burden Bell Atlantic

The Bell Atlantic PAP does not meet the “self executing” requirements of the Commission due to the manner in which it treats discrimination against CLECs. Intermedia submits that under any penalty process, Bell Atlantic will itself choose, through the performance level it provides to wholesale operations, what penalties it will incur. If Bell Atlantic provides service in the non-discriminatory fashion required under the Telecommunication Act, it will pay no penalties. Only by choosing to discriminate in the favor of its retail operations will Bell Atlantic incur a financial liability. Accordingly, the Commission needs to ensure that financial disincentives are of sufficient size *and* frequency to move Bell Atlantic to provide wholesale services in a manner which ensures the viability of competitive alternatives.

C. Negative Performance Should Not Be Offset by Positive Performance

The PAP allows Bell Atlantic to offset poor performance in one performance category with good performance in another. Specifically, Bell Atlantic’s PAP allows it to use good performance in a subsequent or prior month for a particular measure to offset poor performance in a given month, largely due to the chance of statistical error. Such offsets allow Bell Atlantic to systemically discriminate against particular CLECs without penalty. But Intermedia submits that any negative performance by Bell Atlantic could destroy consumer confidence in CLECs, and therefore Bell Atlantic should be penalized each time it discriminates. For example, blockage of interconnection trunks is critical to customer perception of CLEC operations. Any blockage that exceeds thresholds could impact the competitive marketplace and should therefore result in penalties.

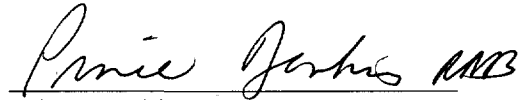
At bottom, it is clear that Bell Atlantic’s PAP must be strengthened in order to disincent Bell Atlantic from providing discriminatory service to CLECs once it receives 271 authority. While

changes to the plan have moved it closer to being acceptable, when viewed in its entirety the plan fails to meet the test of a “self executing enforcement mechanism” adopted by the Commission. Instead, adoption of the existing plan will likely allow Bell Atlantic to engage in discriminatory treatment of wholesale customers with minimal financial liability. In order to protect consumers and foster competition in New York, the Commission must require Bell Atlantic to modify its backsliding measures such that Bell Atlantic will have a true incentive to keep its promises.

XVI. CONCLUSION

Bell Atlantic has made significant progress towards full compliance with section 271. The record in this proceeding provides an ideal analytical model that the Commission should adopt in its analysis of all 271 applications. Intermedia, believes however, that Bell Atlantic should demonstrate that it is complying with sections 271 that it has not yet fully addressed. Specifically, the issues of hot cuts, DSL capable loop provisioning, and anti-backsliding measures must be examined by the Commission to ensure that the level of competition envisioned in the 1996 Act is present and sustainable in New York. To the extent that Bell Atlantic resolves these issues before the Commission's statutory 90-day review period concludes, then the Commission should approve Bell Atlantic's Application.

Respectfully submitted,

A handwritten signature in cursive script, reading "Prince Jenkins" followed by a stylized monogram "MB".

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October 19, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October, 1999, a copy of the foregoing was delivered by hand, Federal Express, or first-class mail to the following:

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